

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM, L.L.C.

Plaintiff,

vs.

AMAZON.COM, INC., et al

Defendants.

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Civil Action No. 6:10-cv-00329 (LED)

Jury Trial Demanded

ORDER

CAME BEFORE THE COURT Plaintiff AdjustaCam LLC's ("AdjustaCam" or "Plaintiff") Motion to Dismiss Plaintiff's Claims against Defendants Sakar International, Inc., Kohl's Illinois, Inc., and Kohl's Corporation, Inc. (collectively "Sakar/Kohl's") and Sakar/Kohl's Counterclaims against Plaintiff (the "Motion"), and the Court being of the opinion that said motion should be GRANTED IN PART, it is hereby ORDERED that:

(1) Plaintiff's claims against Sakar/Kohl's are hereby DISMISSED WITH PREJUDICE;

(2) Sakar/Kohl's counterclaims are hereby DISMISSED WITHOUT PREJUDICE subject to Plaintiff providing Sakar/Kohl with a covenant not to sue that is sufficient in scope, as set forth in paragraph (3) below; and

(3) Plaintiff shall provide Sakar/Kohl with an amended covenant not to sue that is sufficient in scope as follows (with Sakar's proposed amendments shown in emboldened type):

AdjustaCam LLC hereby unconditionally covenants not to sue Sakar International, Inc., Kohl's Illinois, Inc., Kohl's Corporation, Inc. and Kohl's Department Stores, Inc., and

any successors-in-interest (collectively "Sakar/Kohl's") for infringement as to any claim of U.S. Patent No. 5,855,343 (the "'343 patent"), **including any new claims that issue as a result of reexamination.** Further, AdjustaCam LLC hereby unconditionally covenants not to sue manufacturers, suppliers, wholesalers, sellers, offerors for sale, importers, and/or users for infringing the '343 patent relative to Sakar/Kohl's past or current **or future inventory of Sakar/Kohl's accused Kodak webcam** products as they exist today or have existed in the past. The foregoing unconditional covenant not to sue extends all the way up and down the distribution chain for Sakar/Kohl's currently existing and products, from manufacture through distribution and end use. This covenant shall be binding upon any purchaser, assignee, or successor-in-interest of the '343 patent **and to any purchaser, assignee, or successor-in-interest of Sakar/Kohl's.**